Supreme Court, U.S.
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NO. 91-937

IN THE

Supreme Court of the United States

OCTOBER TERM 1991

PETER S. STEIGERWALD,
Petitioner

ANITA RODEHEAVER, ET AL.,
Respondents

Brief In Opposition To Petition For Writ Of Certiorari To The Supreme Court Of The United States

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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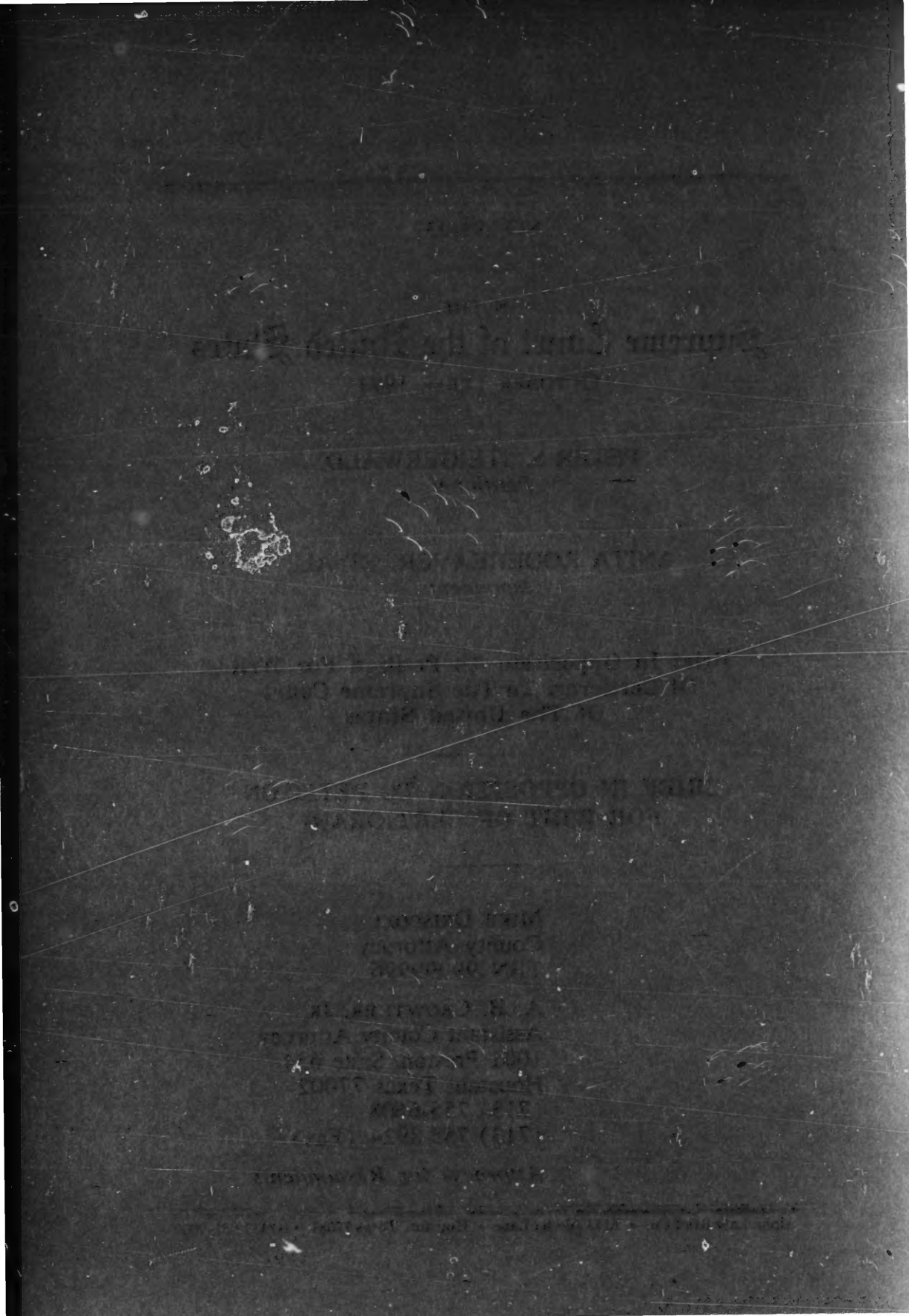

QUESTIONS PRESENTED

Whether in a civil rights action against a government unit under 42 U.S.C. § 1983, an award of attorney's fees to the prevailing party is mandatory under 42 U.S.C. § 1988, irrespective of a state law rule of governmental immunity to liability for attorney's fees, wherein the alleged "civil rights action" was neither pled by the Petitioner nor any evidence offered thereon in the trial court, but was raised for the first time after jury verdict in his "Motion to Disregard Jury's Answers".

LIST OF ALL PARTIES

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(Petitioner here)

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Attorney for Petitioner

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Anita Rodeheaver, County Clerk of
Harris County, Texas
1001 Preston
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Nikki Van Hightower, County Treasurer
of Harris County, Texas
1001 Preston
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J. F. Flack, County Auditor of
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NO. 91-937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

PETER S. STEIGERWALD,
Petitioner,

v.

ANITA RODEHEAVER, ET AL.,
Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To The Supreme Court Of The United States

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RESPONDENTS HARRIS COUNTY, TEXAS, et al, prespectfully pray that a Writ of Certiorari to review the judgment and opinion of the Texas Court of Appeals, 14th District, be denied.

OPINION BELOW

The opinion and judgment of the Texas Court of Appeals, 14th District, appears in the Appendix of Petitioner's Application For Writ of Certiorari (pages 23a - 29a), and the opinion is reported at 807 S.W.2 790.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Respondent denies that any of the following constitutional and statutory provisions are involved in this case:

1) 5th Amendment to the United States Constitution (deprivation of property without due process);

2) 14th Amendment to the United States Constitution;

3) 42 U.S.C. § 1983 (Civil Rights);

4) 42 U.S.C. § 1988 (Attorney's Fees on Civil Rights Cases).

As discussed below, none of the above federal constitutional or statutory provisions are discussed in the opinion on motion for rehearing of the Texas Court of Appeals, 14th District. In addition, the only thing that Petitioner is really complaining about in his Application For Writ of Certiorari is the failure of the State courts to allow him to recover attorney's fees. Respondents submit that attorney's fees in this context are not "property" under the 5th Amendment to the United States Constitution. It follows that Plaintiff is unable to show any deprivation of "property" under said 5th Amendment.

STATEMENT OF THE CASE

I.

IN THE TRIAL COURT:

Petitioner would have this Court believe that he both pled and proved a civil rights cause of action (42 U.S.C. § 1983) against Harris County Texas, in the

trial court below. See Petitioner's "Statement of the Case", Application For Writ, page 4. However, a close examination of Petitioner's "First Amended Original Petition" (Application For Writ, App. pages 1a-9a) will readily show this Court that Petitioner wholly failed to plead said civil rights cause of action. Nor did Petitioner ever make any representations during the trial that he was bringing a civil rights cause of action against the Defendants. At no time before or during the trial, by pleadings or presentation of evidence, did Petitioner ever raise the civil rights issue. (S/F 1-155). Petitioner first made his contention that he had in fact pled a civil rights action and was therefore entitled to attorney's fees under 42 U.S.C. § 1988 in his "Motion to Disregard Jury's Answers. . . . And to find Attorney's Fees. . . ." (App. pages 14a - 17a). Said Motion to Disregard Jury's Answers was properly denied by the trial court, and final judgment was entered awarding Petitioner those attorneys' fees as found by the jury. (See Judgment, App. pages 18a - 22a).

II

IN THE COURT OF APPEALS OPINIONS:

The entire texts of the Texas Court of Appeals opinions are set forth in Petitioner's Application For Writ, Appendix pages 15a - 29a. Neither opinion contains any discussion of any federal questions, or any discussion of Petitioner's claim for attorney's fees under 42 U.S.C. § 1988. The Texas Supreme court denied Petitioner's Application For Writ of Error, and likewise declined to rule on this issue. (Petitioner's Application For Writ, App. page 50a).

REASONS FOR NOT GRANTING THE WRIT

I.

THERE IS NO STATE COURT OPINION ON A FEDERAL QUESTION WHICH IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

Petitioner alleges that this Court should grant his petition based on Rule 17(c), (now Rule 10c), Rules of the Supreme Court of the United States, i.e., the State court has decided a federal question in a way in conflict with applicable decisions of this Court. However, as admitted by Petitioner, the State court made no such finding on his civil rights complaint, one way or the other. (See Petitioner's Brief, page 5). Neither the State Court of Appeals original opinion (Petition For A Writ of Certiorari, Appendix p. 15a) or their Opinion on Motion For Rehearing (Petition For A Writ of Certiorari, Appendix p. 23a) address Petitioner's allegations that he is entitled to attorney's fees under 42 U.S.C. § 1988. It follows that the requirements of said Rule 10(c) are not met in this case. There can be no "conflict" between the Texas Court of Appeals decisions (as published), and the applicable decisions of this Court, if said State court decisions do not address and are silent on the contested issue.

The only subject discussed in the Texas Court of Appeals opinion on motion for rehearing concerns Petitioner's entitlement to attorney's fees under the Texas Declaratory Judgment Act. See said opinion in Petitioner's Application for Writ of Certiorari, Appendix, page 23a. Said opinion does not involve any constitutional issue,

nor does it involve any type of "conflict" with any opinion of this Court. It follows that Petitioner's application for writ of certiorari under Rule 10(c) should be denied.

II.

THERE IS NO SUBSTANTIAL FEDERAL ISSUE OF NATIONAL IMPORTANCE.

In addition, Petitioner is unable to show this Court that there are any special and important reasons for granting his application for writ, in accordance with Rule 10.1, Supreme Court Rules. It can hardly be said that the issue of attorney's fees in a state declaratory judgment action against a governmental unit is a substantial federal issue of national importance, nor is it of any real importance to the public in general. *Rice v. Sioux City Memorial Parks Cemetary, Inc.*, 75 S. Ct. 614, 349 U.S. 70, 99 L.Ed. 897 (1955); *NLRB v. Pittsburg S.S. Co.*, 71 S. Ct. 453, 340 U.S. 498, 95 L.Ed. 479 (1951). There are no special or important reasons reaching constitutional dimensions for this Court to grant this application for writ. *Fay v. Noia*, 83 S. Ct. 822, 372 U.S. 391, 9 L.Ed. 2d 837 (1963); *Rice v. Sioux City Memorial Parks Cemetery, Inc.*, supra.

CONCLUSION

Petitioner cannot satisfy the requirements of Rule 10, Supreme Court Rules, to justify granting of writ of certiorari in this case, for the following reasons:

(1) There are no special or important reasons therefor (Rule 10.1); and,

(2) There is no state court opinion on an important question of federal law that conflicts with applicable decisions of this Court. [Rule 10(c)].

Petitioner's application for writ should therefore be denied.

Respectfully submitted,

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TBN 99999996

By: _____

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Attorneys for Respondents
Harris County, Texas, Et Al.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been served on Petitioner's attorney of record, C. Charles Dippel, 1415 Louisiana, Suite 2550, Houston, Texas 77002 (phone 713/658-0808) by certified mail, return receipt requested, on this the 3rd day of January, 1992. All parties required to be served have been served.

A. B. CROWTHER, JR.
Assistant County Attorney

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

NO. 91-937

PETER S. STEIGERWALD,
Petitioner,

v.

ANITA RODEHEAVER, ET AL.,
Respondents.

APPENDIX

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APPENDIX A

NO. D-1052

IN THE
SUPREME COURT OF TEXAS

PETER S. STEIGERWALD,
Petitioner,

v.

ANITA RODEHEAVER, ET AL.,
Respondents.

RESPONDENTS' REPLY TO PETITIONER'S APPLICATION FOR WRIT OF ERROR

(From the 14th Court of Appeals, Houston, Texas)
(No. 14-90-00020-CV)

MIKE DRISCOLL
County Attorney
TBN 99999996

By: A. B. CROWTHER, JR.
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1001 Preston, Suite 634
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(713) 221-6608

Oral Argument
Requested

ARGUMENT AND AUTHORITIES

REPLY TO POINT ONE (Civil Rights Contention) PLAINTIFF IS NOT ENTITLED TO ATTORNEYS FEES UNDER CIVIL RIGHTS ACT.

The Plaintiffs first made their contentions that they had in fact pled a civil rights action and were therefore entitled to attorney's fees under 42 U.S.C. § 1988 in their "Motion To Disregard Jury's Answer To Question No. 2". (Tr. 576). The patently obvious purpose of this transparent ploy was to allow the trial court to disregard the jury finding on attorney's fees, and render unto the Plaintiffs' attorney those fees which he would like to receive.

The Plaintiffs' rationale is that under 42 U.S.C. § 1988, the jury finding is advisory only, and the trial court may choose to disregard the jury's finding on attorney's fees. The fact remains that Plaintiffs' pleadings in this cause are totally devoid of any mention of or reference to 42 U.S.C. §§ 1983 and 1988. Had Plaintiffs pled such a cause of action, the Defendants could quite possibly have chosen to remove same to the federal courts. To allow Plaintiffs to make such a claim after jury verdict would be an unfair deprivation of the Defendants' right to have the alleged civil rights case removed to federal court.

Plaintiff's contention that he is entitled to attorney's fees under the civil rights act (42 U.S.C. 1983) is a somewhat tardy and patently transparent attempt to allow the trial court to set aside the jury award of attorney's fees in the amount of $3,000.00 (See Judgment Tr. 592, 597), and to award attorney's fees in the trial court's discretion under 42 U.S.C. § 1988. The Plaintiff was

very dissatisfied with the jury's award of attorney's fees, so he invented this somewhat ingenious argument that he was, in truth and in fact, at all times during this contest, pleading and proving a civil rights action herein. This court should see through and disregard this transparent maneuver on the part of the Plaintiff.

Plaintiff's contention that he did in fact plead a civil rights action under 42 U.S.C. § 1983, and is therefore entitled to attorney's fees under 42 U.S.C. § 1988, comes too late. At no time before or during the trial, by pleadings or presentation of evidence, did Plaintiff ever raise the civil rights issue. There was therefore no "fair notice" to Defendants of Plaintiff's civil rights claim, nor was the issue tried by consent.

Rule 45, Tex. Rules Civ. Proc., provides in part as follows:

> "Pleadings in the district and county courts shall (a) be by petition and answer;
> (b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when *fair notice* to the opponent is given by the allegations as a whole;" (Emphasis added).

Rule 47, Tex. Rules Civ. Proc., provides in part as follows:

> "An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain
> (a) a short statement of the cause of action sufficient to give *fair notice* of the claim involved,"
> (Emphasis added).

One of the primary purposes of pleadings, as directed by Rules 45 and 47, Tex. Rules Civ. Proc., is to give the opposing party "fair notice" of the substance of a party's claims in the case. This the Plaintiffs totally failed to do. "Fair notice" was not given the County that the Plaintiff was in effect pleading a civil rights action, and Plaintiff's claims in this regard should be denied. *Jay Fikes and Assoc. v. Walton,* 578 S.W.2d 885 (Tex. App.—Amarillo 1979, ref. n.r.e.); *Burnett/Smallwood and Co. v. Helton Oil Co.,* 577 S.W.2d 291 (Tex. App.—Amarillo 1979, n.w.h.).

Nor were the civil rights issues "tried by consent". At no time during the presentation of evidence in the trial of the case below did the Plaintiffs ever apprise the court or the Defendants that they were seeking relief under the civil rights act. (S/F 1-155). Theories of recovery that are neither raised by the pleadings or tried by consent are deemed to have been waived by the party asserting them. Rule 67, Tex. Rules Civ. Proc., *Gulf & Basco Co. v. Buchanan,* 707 S.W.2d 655 (Tex. App.—Houston [1st Dist.] 1986, wr. ref. n.r.e.); *La Marque Independent School Dist. v. Thompson,* 580 S.W.2d 670 (Tex. App. —Houston [14th Dist.] 1979, n.w.h.); *Whitley v. Whitley,* 566 S.W.2d 660 (Tex. App.—Beaumont 1978, n.w.h.).

Again, Plaintiffs' burden of proof in a civil rights action as well as Defendants' presentation of evidence in defense thereof is entirely different in a civil rights action than that presented in this case. *Monell v. Dept. of Social Services of City of New York,* 436 U.S. 658, 98 S. Ct. 2018 (1978). Defendants submit that Plaintiffs failed to sustain their burden of proof on the alleged civil rights action, but more importantly, by the Plaintiffs failing to plead the civil rights action, the County had no oppor-

tunity to structure its defense accordingly. Such a situation fails to satisfy the "fair notice" pleading requirement that a Plaintiff must satisfy in order to give the Defendant a fair opportunity to defend the lawsuit. Rules 45 and 47, Tex. Rules Civ. Prec.; *Ghazali v. Southland Corp.*, 669 S.W.2d 770 (Tex. Ct. App.—San Antonio 1984, n.w.h.); *Roark v. Allen,* 633 S.W.2d 804 (Tex. 1982); *Armstrong v. Armstrong,* 601 S.W.2d 724 (Tex. App.—Beaumont 1980, ref. n.r.e.).

It is significant to note that had Plaintiffs raised the civil rights action in the trial court, the Defendants would have been required to structure their defense to respond to these new and different allegations. To allow the Plaintiffs to come along *after the fact* and claim that they did, in fact, plead and prove a civil rights action against the Defendants would deprive the Defendants of the opportunity of structuring their defense by the presentation of evidence and defensive matters in response thereto. Surely such an unfair and inequitable result will not be approved by this court.

Finally, for Plaintiff to raise the "waiver for lack of pleading" issue against the Defendants on their sovereign immunity defense, and at the same time contend that he is entitled to a civil rights action in this case (even though not pled) presents a somewhat contradictory approach by the Plaintiff. If the Plaintiff is going to rely on *Davis v. City of San Antonio,* 752 S.W.2d 518 (Tex. 1988) in support of his allegations that the Defendants have "waived" their sovereign immunity defense by failing to plead same, then the Defendants submit that *Davis* should also preclude the Plaintiff from making any such civil rights claim. In fact, *Davis* is much more applicable to the Plaintiff's civil rights pleading claim, because Plaintiff

as in *Davis,* totally failed to raise any civil rights claim until *after* the trial before the court. CONCLUSION: Plaintiff neither pled nor raised any civil rights cause of action in the trial court below, and this court should therefore deny Plaintiff's claim for attorney's fees under 42 U.S.C. § 1988.

APPENDIX B

NO. D-1052

IN THE
SUPREME COURT OF TEXAS

PETER S. STEIGERWALD,
Petitioner,

v.

ANITA RODEHEAVER, ET AL.,
Respondents.

RESPONDENTS' REPLY TO PETITIONER'S
MOTION FOR REHEARING ON
APPLICATION FOR WRIT OF ERROR

(From the 14th Court of Appeals, Houston, Texas)
(No. 14-90-00020-CV)

MIKE DRISCOLL
County Attorney
TBN 99999996

By: A. B. CROWTHER, JR.
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NO. D-1052

IN THE
SUPREME COURT OF TEXAS

PETER S. STEIGERWALD,
Petitioner,

v.

ANITA RODEHEAVER, ET AL.,
Respondents.

RESPONDENTS' REPLY TO PETITIONER'S MOTION FOR REHEARING ON APPLICATION FOR WRIT OF ERROR

TO THE SUPREME COURT OF TEXAS:

RESPONDENTS ANITA RODEHEAVOR, County Clerk of Harris County, Texas, NIKKI VAN HIGHTOWER, County Treasurer of Harris County, Texas, J. F. FLACK, County Auditor of Harris County, Texas and HARRIS COUNTY, TEXAS, presents this their Reply To Petitioner's Motion For Rehearing On Application For Writ of Error, and pray for affirmation of the judgment of this court, denying Petitioner's application for writ of error.

REPLY TO PETITIONER'S GROUND ONE (CIVIL RIGHTS CONTENTION)

STATEMENT OF FACTS:

Petitioner totally failed to plead any type of civil rights cause of action undner 42 U.S.C. § 1983. Petitioner's trial pleading was his First Amended Original Petition (Tr. 50, Appendix 1 To Petitioner's Application For Writ of Error) and a review thereof will show the court that it is totally devoid of any suggestion that petitioner is bringing a civil rights cause of action against the Respondents.

A review of the Statement of Facts will show the court that at no time during the presentation of evidence was the issue of a civil rights violation raised by the Petitioner. (S/F p. 1-155).

It was not until after a jury verdict had been returned awarding the Petitioner a rather nominal amount for attorney's fees (see Judgment, Tr. 597) that Petitioner sought to claim by means of Motion To Disregard Jury's Answers that they had in fact pled and proven a civil rights action, and were therefore entitled to an award of attorney's fees, irrespective of the jury award. (Tr. 576).

ARGUMENT AND AUTHORITIES

Petitioner raises no new arguments or points of law on this civil rights contention. The fact remains that Petitioner never raised any civil rights claims or presented any evidence thereon in the trial court, until after both sides had "closed" and a jury verdict rendered awarding Petitioner a rather nominal sum of $3,000.00 (See Judgment, Tr. 592, 597).

This Ground of Error has been adequately briefed in Respondents' "Reply To Point One (Civil Rights Contention)" (See Respondents' Reply To Petitioner's Application For Writ of Error, Pages 9-13), and will not be repeated here.

Respondents submit that Petitioner has been afforded a full and complete trial by jury on the merits of the case, and has been afforded all of the appeal rights that are due him under the Texas Rules of Appellate Procedure. This being the case, Respondents deny Petitioner's contention that the failure of the Texas courts to allow recovery of attorney's fees to a prevailing party in a civil rights action constitutes a denial of equal protection.

REPLY TO PETITIONER'S GROUNDS OF ERROR NUMBERS TWO ("WAIVER" CONTENTION), THREE (SOVEREIGN IMMUNITY DEFENSE) AND FOUR (FACTUAL INSUFFICIENCY)

Respondents' reply to these additional Grounds of Error are adequately briefed in their "Reply To Petitioner's Application For Writ Of Error", pages 14-36, and will not be repeated here.

—

CONCLUSION AND PRAYER

WHEREFORE, PREMISES, ARGUMENT AND AUTHORITIES CONSIDERED, Respondents pray for denial of Petitioner's Motion For Rehearing on Application For Writ of Error, and pray for judgment affirming the judgment of this court, denying Petitioner's

application for writ of error, and for such other and further relief to which they are justly entitled.

Respectfully submitted,

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County Attorney

By: /s/ A. B. CROWTHER, JR.
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Anita Rodeheaver, et al

ATTORNEY'S FOR
RESPONDENTS
ANITA RODEHEAVER, ET AL

APPENDIX C

NO. 87-31,986

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
295TH JUDICIAL DISTRICT

PETER S. STEIGERWALD, et al.,
Plaintiffs,

v.

ANITA RODEHEAVER, et al.,
Defendants.

MOTION TO DISREGARD JURY'S ANSWERS TO JURY QUESTION NO. 2 AND MOTION TO FIND ATTORNEY'S FEES AND SIGN JUDGMENT

TO THE HONORABLE JUDGE
OF SAID COURT:

Plaintiffs, Peter S. Steigerwald and R. C. Smith, move the Court to disregard the jury's answers to Jury Question No. 2 as immaterial and advisory, then to find reasonable and necessary attorney's fees and sign a judgment awarding full relief sought, upon the following grounds:

1.

Jury Question No. 2 was submitted by the Court with full recognition by the Court and the parties that the jury's answers would be advisory, since the Court must find and determine whether to award reasonable attorney's fees. The jury's answers to Jury Question No. 2 demonstrates that the jury failed to follow the evidence

adduced, finding attorney's fees in amounts so low as to shock the conscience and which are not sustainable under the evidence. The Court could not in good conscience be advised by the answers and the answers must be disregarded.

2.

Plaintiffs have plead an action under 42 U.S.C. § 1983, *et. seq.*, commonly known as the Civil Rights Act of 1871. The Act provides that any person (the County defendants) who, under color of any statute of any State (Article 2558a, Sec. 4a) subjects or causes to be subjected any citizen of the United States (Steigerwald and Smith) to the deprivation of any rights, privileges or immunities secured by the Constitution and laws (their interest due them as protected by the Fourteenth Amendment), shall be liable in an action at law or in equity. This Court has concurrent jurisdiction over the action with any Federal court. Section 1988 of 42 U.S.C. provides that in any action under Section 1983, "the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs." Case authority holds that the Court, and not the jury, determines the attorney's fee. The award has been held to be mandatory to a prevailing party, and plaintiffs have prevailed here.

3.

Plaintiffs have also sued under the Texas Declaratory Judgment Act. Section 37.009, Civil Practice and Remedies Code, provides that the Court may award costs and reasonable and necessary attorney's fees "as are equitable and just." The great weight of authority is

that the Court determines the attorney's fees in its discretion, and any appellate review of attorney's fees is based upon the abuse of discretion standard.

4.

The only evidence of reasonable and necessary attorney's fees in this case demonstrates the following fees which should be awarded

R. C. Smith		$6,400 total
Peter S. Steigerwald	Trial Court	$113,609
	Court of Appeals	$22,722
	Supreme Court	$17,041

Plaintiff's request award of fees in those amounts. If the Court concludes to create an independent record of attorney's fees evidence or to supplement the record made at trial, plaintiffs stand ready to provide evidence as the Court deems necessary.

5.

The jury's answers to Jury Question No. 1 were the only answers which could have been given. The County's testimony and evidence amounted to no evidence because in all instances in which the formula might be applied the County would retain, and not pay to persons entitled, the difference in rate between the checking and time deposits, up to the amount of the checking account balances. The Court should sign a judgment based upon Jury Question No. 1.

WHEREFORE, the plaintiffs pray that the jury answers to Jury Question No. 2 be disregarded, that the

Court find attorney's fees as requested, and that the Court sign a judgment in the attached form.

Respectfully submitted,

SEARS AND BURNS
55 Waugh Drive, Suite 400
Houston, Texas 77007-5812
(713) 863-9601

By /s/ C. CHARLES DIPPEL
C. Charles Dippel
TBN 05891000)
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion to Disregard Jury's Answers to Jury Question No. 2 and Motion to Find Attorney's Fees and Sign Judgment has been delivered by messenger to opposing counsel, Mr. A. B. "Bert" Crowther, Jr., Assistant County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002, on this the 28th day of August, 1989.

/s/ C. CHARLES DIPPEL
C. Charles Dippel

APPENDIX D

NO. 87-31986

IN THE
DISTRICT COURT OF HARRIS COUNTY, TEXAS
295TH JUDICIAL DISTRICT

PETER S. STEIGERWALD, ET AL.,

v.

ANITA RODEHEAVER, ET AL.

JUDGMENT

On the 23rd day of August, 1989, came on to be heard the above-entitled and numbered cause, and the Plaintiffs appeared in person or by attorney of record and announced ready for trial, and the Defendants appeared by attorney of record and announced ready for trial, and a jury having been previously demanded, a jury consisting of six good and lawful jurors was duly empaneled and the case proceeded to trial.

At the conclusion of the evidence, the Court submitted the case to the jury on jury questions. The charge of the Court, including the jury questions, and the verdict of the jury, are stated as follows:

JURY QUESTION NO. 1

From a preponderance of the evidence, what sum of money constitutes the interest earned upon the sums of money deposited on behalf of R. C. Smith and Peter S. Steigerwald for the period of time of deposit?

ANSWER in dollars and cents, as to each:

R. C. SMITH:

Answer: $16,411.11

PETER S. STEIGERWALD:

ANSWER: $271,809.50

JURY QUESTION NO. 2

What sum of money, if any, do you find from a preponderance of the evidence constitutes reasonable and necessary attorney's fees for legal services for the prosecution of the claims of R. C. Smith and Peter S. Steigerwald in his suit, including all legal services rendered and to be rendered:

(1) through all proceedings in the trial court?

(2) in the Court of Appeals, should appeal to that Court be perfected?

(3) in the Supreme Court, should an application for writ of error be filed?

Answer in dollars and cents, if any, as to each of the following:

R. C. SMITH:

(1) In the District Court:	$700
(2) In the Court of Appeals:	-0-
(3) In the Supreme Court:	-0-

PETER S. STEIGERWALD:

(1) In the District Court:	$3000
(2) In the Court of Appeals:	-0-
(3) In the Supreme Court:	-0-

The jury returned its verdict upon the vote of five. Post verdict motions by the parties were filed and duly considered by the Court.

It appearing to the Court that the verdict of the jury was for the Plaintiffs and against the Defendants, judgment should be rendered upon the verdict in favor of the Plaintiffs and against the Defendants. Based upon the above jury response to Jury Question No. 2, it is therefore ORDERED that attorney's fees be awarded the Plaintiffs, as follows:

R. C. SMITH	$700.00 for all services rendered, through and including appeal.
PETER S. STEIGERWALD	$3000.00 for all services rendered, through and including appeal.

It is further ORDERED that Plaintiff R. C. Smith do have and recover of and from the defendant, Harris County, the sum of Sixteen Thousand Four Hundred Eleven and 11/100 ($16,411.11) Dollars, together with prejudgment interest thereon at the rate of ten percent (10%) per annum, compounded annually, from January 7, 1987, to the date of this judgment.

It is further ORDERED that plaintiff Peter S. Steigerwald do have and recover of and from the defendant, Harris County, the sum of Two Hundred Seventy-one Thousand Eight Hundred Nine and 50/100 ($271,809.-50) Dollars, together with prejudgment interest at the rate of ten percent (10%) per annum, compounded annually from May 19, 1987, to the date of this judgment.

All of the foregoing amounts shall bear post-judgment interest at the lawful rate prescribed by Article 5069-1.05,

V.T.C.S., to-wit, ten percent (10%) per annum, compounded annually, from date of signing of this judgment until paid.

This Court's prior interlocutory order granting partial summary judgment in favor of plaintiffs is merged into this final judgment.

All costs of Court are adjudged against defendants. All writs and processes for enforcement and collection of this judgment may issue as necessary. All relief not expressly granted is expressly denied;

AND IT IS SO ORDERED, ADJUDGED AND DECREED.

SIGNED this 13th day of September, 1989.

/s/ DAN DOWNEY
Dan Downey
Presiding Judge

APPROVED AS TO FORM:

MIKE DRISCOLL
County Attorney, TBN 99999996

By: /s/ A. B. CROWTHER, JR.
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